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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/528,958

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Ulrich Ebbeskotte

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EXAMINER

GARRETT, ERIKA P

ART UNIT

PAPER NUMBER

3636

MAIL DATE

DELIVERY MODE

10/03/2008

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/528,958	Applicant(s) EBBESKOTTE ET AL.	
	Examiner ERIKA GARRETT	Art Unit 3636	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 05 December 2007.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-14 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-14 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>1/15/08</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Rejections - 35 USC § 112

1. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter, which the applicant regards as his invention.
2. Claims 1-14 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.
3. In regards to claim 1, the phrase states "the carrier is movable in a direction transverse to the seat and onto which the guide shell is movable mounted to pivot around a first axis", is unclear if the carrier or the guide shell pivots.
4. It also doesn't explain the function of the holder pivoting and the axis. What is the purpose of pivoting and why?
5. In regards to claim 14, phrase "a fastening device in accord with wherein a recess is formed by a slot...", is unclear and confusing. It appears that this should depend from another claim and not be an independent claim.

Drawings

6. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, "the two radially extending dents and two recesses" must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

Claim Rejections - 35 USC § 102

7. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) The invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

8. Claims 1, 8, 10-12 and 14 as best understood are rejected under 35 U.S.C. 102(b) as being anticipated by Courtis (5,860,703). Courtis discloses the use of

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a fastening device for a headrest (5) of a vehicle seat (1) with two holders distanced from one another in a direction transverse to the seat for adjustable guidance of the height of two headrest support rods (8); one of the holders (9) having a guide shell (22) which can accommodate a support rods in a slidable encasement, and a carrier (10) mounted on the frame (framework of 4) of the vehicle seat and being movable in a direction transverse to the seat onto which the guide shell is movably mounted to pivot around a first axis that runs in the longitudinal direction of the seat, figures 5-9.

9. In regards to claim 8, the shell supports itself on a counter surface on the upper end of the carrier by means of a flange (27) projecting outside.

10. In regards to claim 10, the carrier is a hollow structure member (see figures 3 and 7-9) penetrated by the shell within a protective encasement affixed to the seat framing in the transverse direction of the seat.

11. In regards to claim 11, the walls of the carrier face in the transverse direction of the seat diverge in the direction of a lower end of the walls, see figures 7-9.

12. In regards to claim 12, the guide shell is nonrotatably affixed in relation to a central axis.

13. In regards to claim 14, a recess is formed by a slot (17) facing wall of the carrier (10) itself the recess extending upward from an area of the carrier underneath recess which co acts with the ring projection and opens in the upper end-face of the carrier.

Claim Rejections - 35 USC § 103

14. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

15. Claims 2-6 and 9 are rejected under 35 U.S.C. 103(a) as being unpatentable over Courtois in view of Schmutz (5,110,185). Courtois fails to show the use of a second and third axis.

16. Schmutz teaches the use of a second and third axis, shown on figures 2 and 5-6.

17. It would have been obvious to one of ordinary skill in the art at the time of invention to modify the headrest with an axis as taught by Schmutz, in order to adjust the height of the headrest.

18. Claims 7 and 13 are rejected under 35 U.S.C. 103(a) as being unpatentable over Courtois in view of Kitamura (4,545,618). Courtois fails to show the use of a ring projection.

19. Kitamura teaches the use of a ring projection (17).

20. It would have been obvious to one of ordinary skill in the art at the time of invention to modify the fastening device with a ring projection as taught by Kitamura, in order to pivot.

Response to Arguments

21. Applicant's arguments with respect to claims 1-14 are have been considered but are moot in view of the new ground(s) of rejection.

22. In regards to applicant argument that Courtois does not “*disclose two holders for receiving headrest support rods*”. The applicant attention is drawn to the above rejection. The examiner is of the opinion that Courtois does in fact disclose two holders for receiving headrest support rods; see column 1 lines 40-45 and column 3 lines 35-40.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to ERIKA GARRETT whose telephone number is (571)272-6859. The examiner can normally be reached on Monday-Thursday 9:30 a.m.-6:30 p.m.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, David Dunn can be reached on 571-272-6670. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/E. G./

Examiner, Art Unit 3636

September 22, 2008

/DAVID DUNN/

Supervisory Patent Examiner, Art Unit 3636